LOS ANGELES BAR BULLETIN

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THE BRETTON WOODS AGREEMENTS
will be debated at the April 26 meeting.
For names of speakers, see **A Word from the President**, p. 226.

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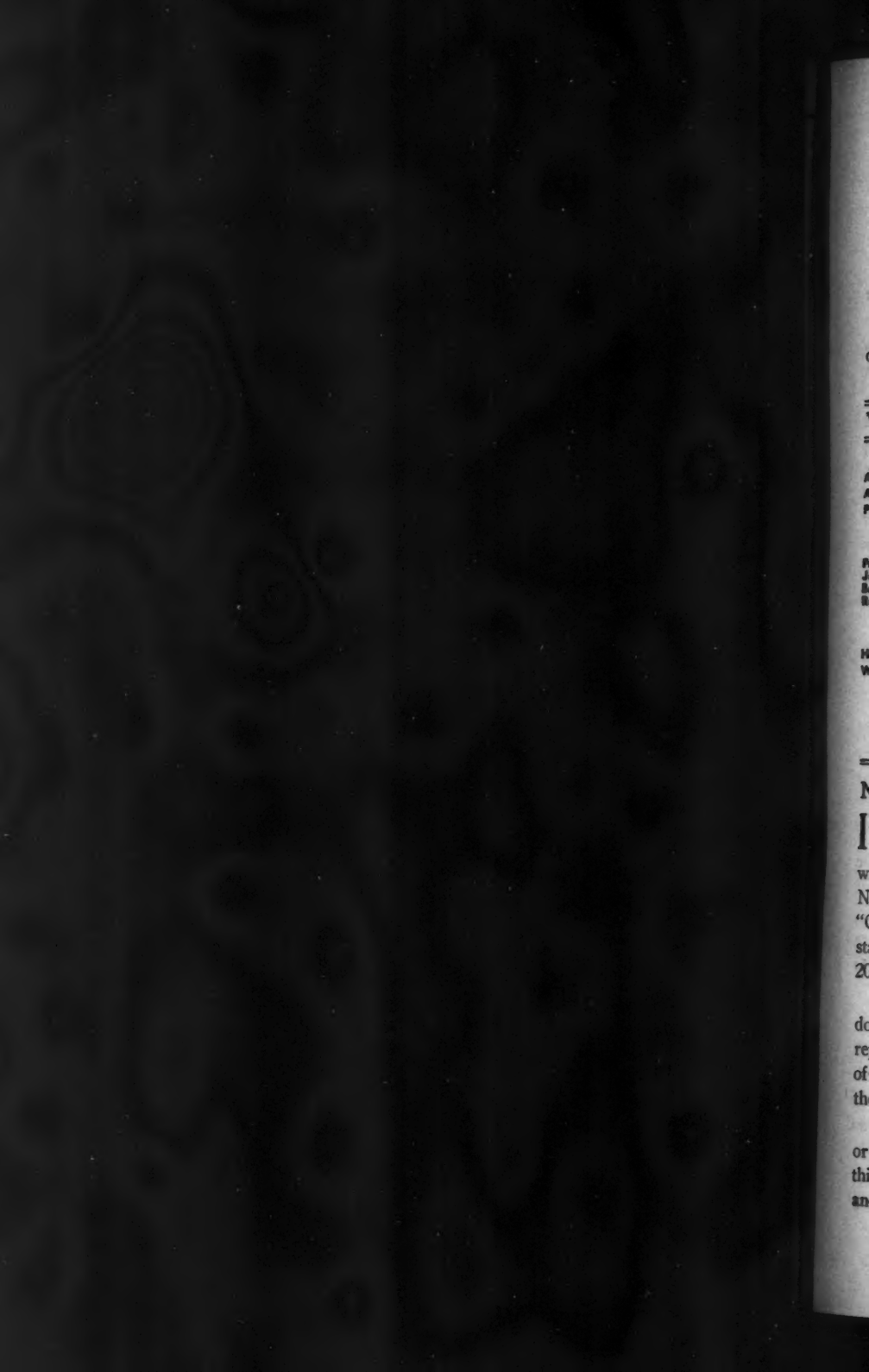

LOS ANGELES

BAR BULLETIN

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VOL 20 APRIL, 1945 No. 8

NEW MEMBERS

IN this number of the BULLETIN appears a list of 166 names of persons who have become new members of the Association, or whose memberships have been reinstated, in the period from November 30, 1944, to March 13, 1945. In E. D. M.'s column, "Comment and Criticism," in the March, 1945, BULLETIN this statement is made: "The Association membership now numbers 2083. The increase over the same period last year is 322."

The kind, variety, quality, and quantity of work that is being done by the Association is impressive. One has only to review the reports of the committees to realize how many heed those words of Theodore Roosevelt, "Every man owes some of his time to the upbuilding of the profession to which he belongs."

It seems logical to assume that most attorneys practicing in or near Los Angeles definitely are interested in being a part of this active, useful organization. Many of those who do not belong, and who should and want to belong, seem reluctant to apply for

membership. They wait until some one suggests that they file applications for membership.

The writer knows one member of the Association who, in the past two years, has asked several attorneys if they belong to the Association—men who should be members. In each case of a man not a member the reply was that he would like to be a member; and in each instance he became a member.

The writer is expressing his views only. He is not informed as to the Association's policy on new members beyond knowing that all applications for membership are scrutinized carefully, and that not all applications are passed. He has never heard of a "membership drive," actual or contemplated. The writer believes, however, that a benefit can be brought to the Association and to many attorneys if, from time to time, more members of the Association ask the question: "Do you belong to Los Angeles Bar Association?"—E. W. T.

A WORD FROM THE PRESIDENT

THE large attendance at the March meeting of the Association and the attentive reception given to Dr. Sterling's address would seem to indicate that our members are interested in informed discussions of public questions.

The April meeting will be devoted to the exploration of another subject very much in the limelight at present: *i.e.*, the Bretton Woods Agreements. Our speakers will be two prominent economists, Dr. Cecil Dunn, of Occidental College, and Dr. V. O. Watts, Economic Counsel of the Los Angeles Chamber of Commerce. Dr. Dunn favors the Agreements; Dr. Watts opposes them.

International finance and its effect upon national and international trade is somewhat of a mystery to most of us. Here is an opportunity to hear a debate on this important subject. The meeting promises to be both interesting and instructive. If you have not already made a reservation I suggest you do so at once.

Alexander Macdonald

COMMENT AND CRITICISM

Something New: Are lawyers so dumb that they must ask laymen what, if anything, is needed to improve court room procedure? It appears some people think so. According to newspapers the Chairman of ABA Committee on Improving the Administration of Justice has held a meeting with business, professional and civic leaders, who will submit suggestions from members of their respective groups to the ABA chairman on how to expedite trials, select juries, etc. Will be interesting to see what these laymen have to recommend.

* * *

Citation: Lt. Com. Stanley N. Gleis, one of our members, has been commended by Admiral King, Fleet Admiral, USN, "for outstanding performance of duty as Commanding Officer of the U. S. S. Wyfels during an enemy arial attack off the Algerian Coast on May 11, 1944."

[Note: THE BULLETIN will be glad to print news of any Association member in the Armed Services, who has received similar honors—Ed.]

* * *

Cooperation: The State Bar having set up its plan to assist attorneys discharged from Military Service, the Board of Trustees authorized President Macdonald to appoint a special committee to cooperate with the State Bar in this laudable and important work. The following committee was thereupon appointed: J. Harold Decker, Chairman; Hon. W. Turney Fox, Earl Johnson, Helena Mary Lucey, Secretary, Richard A. Turner, Hon. Joseph Vickers, and Mrs. Mabel Willebrandt.

* * *

Bar Meetings: The large attendance at the Bar luncheon meeting addressed by Dr. Wallace Sterling of Cal. Tec. on Dumbarton Oaks Proposals, seems to furnish ample evidence that members prefer noon meetings to night meetings, at least at this time. Dr. Sterling made an informative talk, and left a fine impression among his hearers, especially for the manner in which he answered questions. The April meeting will present a debate on the Bretton Woods Agreements.

Illegal Practice: The Iowa Supreme Court has held that collection agencies that take assignments of debt for collection and then send "final notices" and other leally phrased notices to debtors, are practicing law illegally. The question was taken up to the high court by a number of attorneys representing the Polk County (Iowa) Bar Association.

* * *

New Publication: The "American Law and Lawyers," described as "The profession's first and only National Weekly Newspaper," is in the field. It is published in Cincinnati, and appears to cover a wide range of information about the administration of justice, bar organization work, professional welfare, law and government.

* * *

Drinkers' License: In Massachusetts, where 'tis said there are 1,500,000 "drinkers," a Special Commissioner has recommended a license of $2 a head; also, that labels bear direction for the use of all liquor bottles, and suggesting that drinkers eat heartily while drinking. We have a record in California for crack-pot ideas to "regulate" other peoples' lives, but here is one that escaped our busy-bodies.

* * *

Missouri Plan: New York lawyers are engaged in a a vigorous battle for a constitutional amendment designed to "take from political bosses" the selection of judges. Samuel Seabury is president of the Citizens Committee on the Courts, Inc., which seek public support for the Missouri Plan.—E. D. M.

WOMEN'S JUNIOR COMMITTEE

Mr. Gerald C. Riley, Enforcement Attorney in charge of the Legal Division of the War Labor Board in Los Angeles, was the speaker at the March Dinner meeting of the Women's Junior Committee of the Los Angeles Bar. He spoke on the "Interesting Aspects of Enforcement Procedure in the War Labor Board."—A. M.

LOCATION FOR THE NEW LAW LIBRARY

Letters From Joseph Smith and Kemper Campbell

IN a series of three articles,* Thomas S. Dabagh, Librarian of Los Angeles County Law Library, presented some of the problems which confront those who are charged with the responsibility of locating, erecting, equipping, and managing a new county law library. The members of the Bar were urged to send their suggestions to Joseph Smith, the chairman of the Association's Committee on Law Library and Courts Building.

The following is an excerpt from a letter received from Mr. Smith:

> In a recent LOS ANGELES BAR BULLETIN comments were invited on the subject of whether quarters for the law library should be contained in the new court house or in a separate building to be erected by the Trustees of the Law Library. Responsive thereto, we have received a communication on the subject from Kemper Campbell, written forcibly, clearly and logically, the only manner in which I have ever known Kemper to express himself. I commend it to your consideration. I am asking permission of Kemper to present to the BULLETIN for publication this letter, to the end we may possibly excite some public expression of interest on this important question by the attorneys.

The letter from Kemper Campbell, referred to by Mr. Smith, reads as follows:

March 7, 1945.

Mr. Joseph Smith
1225 Citizens National Bank Building
Los Angeles 13, California

Dear Joe:

Re *Location of Law Library*

Law books are of no value unless *used*.

The most essential use of law books if for research by attorneys in praparing cases for trial and in determining questions of law involved in office practice.

The amount of research by lawyers in the course of their practice involving questions that never reach the stage of of litigation is much greater than that involved in questions litigated.

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*"Yes, We Have No Million Dollars!," December, 1944, p. 103; "Let Us Reason Together," January, 1945, p. 136; "We Start It, You Finish It," February, 1945, p. 167.

The amount of research by attorneys in preparation for litigation is far greater than that of the judges.

Comparatively little recourse to the books in the library is had by lawyers when busily engaged in the trial of lawsuits and no doubt a survey will show that most visits to the law library by lawyers are disconnected with any incidental court or civic center business.

Therefore, if the purpose of the law library is to facilitate and encourage the use of law books, the library should be located as closely as possible to the largest number of those who use the books.

All that a lawyer has to dispose of is his time. Time is his most valuable asset. The location of a law library at the greatest possible distance from the business center of the city where the offices of most of the lawyers are situated would result in a tragic waste of the valuable time of lawyers.

The business center of Los Angeles is bounded by Fourth Street on the north, Main Street on the east, Eighth Street on the south, and Grand Avenue to Figueroa Street on the west.

A number of years ago a committee was appointed by Los Angeles Bar Association to promote the erection of a Lawyers' Building in which it was hoped to locate a branch of the County Law Library where law books would be readily accessible to members of the profession. A poll was taken to ascertain the preference of lawyers for the location of such a building and, as might be expected, the overwhelming preference of the lawyers was Fifth and Spring Streets, in the immediate vicinity of which a large proportion of active members of the bar were and are now located.

I suggest that the Librarian be requested, during a reasonable period of time, to ascertain from each lawyer entering the library: (1) location of his office; (2) whether he has combined his visit to the library with any other mission in or near the Hall of Records; and (3) approximately how often he visits the library each year.

In my judgment an investigation will disclose that the location of the County Law Library on Spring Street, or Broadway, between Fifth and First Streets, would result in an increased use of its facilities by lawyers and an aggregate saving of an enormous amount of their valuable time.

The importance to the public of the saving of lawyers' time cannot be overemphasized. One of the most severe criticisms of the administration of civil justice is its prohibitive cost. Whatever increases waste of time by the legal profession must result in increased cost of lawyers' services and this too without any corresponding advantage to clients. To

streamline and modernize the administration of justice, time waste must be minimized. There is an opportunity to make a substantial beginning by locating the Law Library where it will be most accessible to those who use it.

With kindest regards,

Yours very truly,

KEMPER CAMPBELL.

The BULLETIN invites other communications from members of the Association. All letters should be addressed to Mr. Joseph Smith, Chairman of the Committee on Law Library and Courts Building, and they may be sent to the office of the Association or to Mr. Smith at 3406 West Washington Boulevard, Los Angeles 16.

SUPERIOR COURT FILINGS STUDIED IN RELATION TO NEW COURT HOUSE REQUIREMENTS

By Ewell D. Moore of the Los Angeles Bar

CIVIL case filings in the Superior Court have decreased from 28,000 in 1925,* to 8,438 in 1943. In the first six months of 1944 they have shown a marked increase over preceding periods.

Since 1940, domestic relations and juvenile cases have shown striking increases.

Records for the past 43 years disclose a relative ratio has existed between county population, superior court filings and the number of superior court judges.

These are some of the many interesting findings contained in a report of the Bureau of Administrative Research of Los Angeles County. The report is made a part of a progress report of the New Court House Committee to the judges.

Judge Samuel R. Blake is chairman of the committee. The other members of the committee are Judges Charles S. Burnell, Carl A. Stutsman, Goodwin J. Knight, Edward R. Brand, Stanley Mosk and Arthur Crum. John Hackstaff is secretary.

The building of the new court house, the committee hopes, will begin in 1946 and be completed, possibly, in 1950.

The report deals with the estimated requirements of the

*The year the Municipal Courts Act became effective.

superior court for its court rooms and other necessary facilities in the new court house, and takes into consideration the expected growth of the court's business during the two decades after the building is completed.

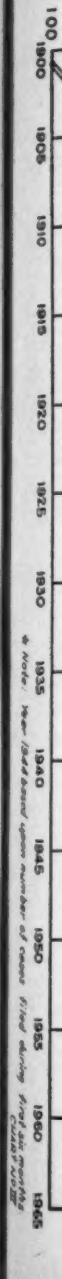
Several studies were made, the report says, of the scope of the past and the estimated future operations of the court. These studies were made on the actual court filings over the past forty years, broken down into their several categories; also of the number of judges constituting the court from time to time, and the synchronous population of the County. Based upon the surveys of the County and the State Regional Planning Commission, United States census figures, and other research bodies, the Bureau of Research arrived at a mean estimate of 5,500,000 as the probable population of the County in 1970.

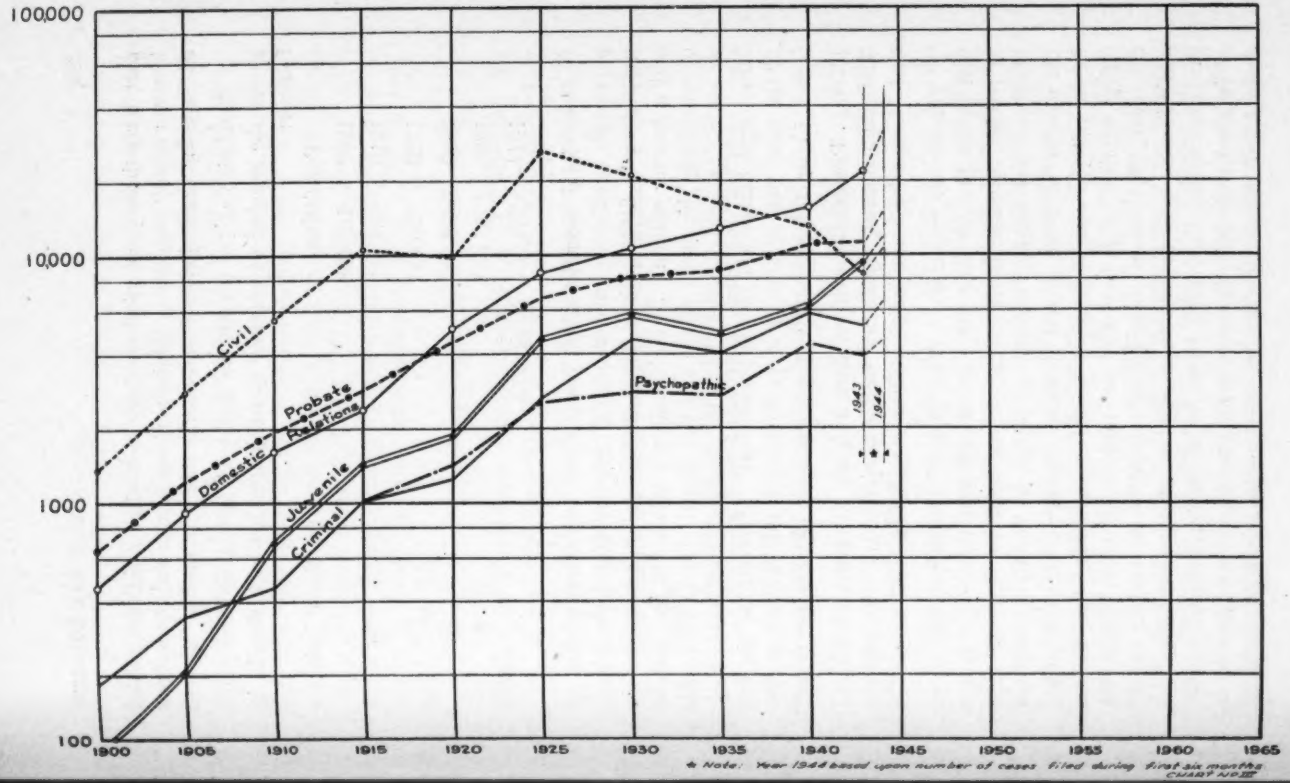
These studies of filings and population, the report continues, have been charted upon accompanying graphs. It is noted from the curves that, although there has been a shift in the character of the litigation represented by the filings, there being increases and decreases in the relative volume of the various types of court work, "the total filings over the period practically run parallel with the contemporaneous population curves."

The committee calls attention to "a definite decrease in the rate of court filings in 1925," and says: "This is explained by the creation at that time of the Municipal Court which took over many of the filings of the Superior Court and increasing jurisdiction thereof. Thereafter it will be noted that the total Superior Court filings again paralleled and followed closely the population trend. It was only the removal of the case load from Superior Court assumed by the Municipal Bench which enabled the Superior Court to handle its constantly increased business without any increase in the number of judges since 1932."

The committee believes that the survey and the graphs give the several trends and the experiences of the court over the period of forty years and enables it to predict the court load for the future, and the probable number of judges and courts for the next twenty or thirty years.

The accompanying report and the graphs prepared by the Bureau of Administrative Research, finds that records for the




GROWTH IN COURT FILINGS BY CLASSES IN LOS ANGELES COUNTY FROM 1900 TO 1944.
100,000
10,000
1000
100
1900
1905
1910
1915
1920
1925
1930
1935
1940
1945
1950
1955
1960
1965
Civil
Probate
Relations
Domestic
Juvenile
Criminal
Psychopathic
1943
1944
* Note: Year 1944 based upon number of cases filed during first six months

past forty-three years disclose that "a relative ratio has existed between county population, Superior Court filings and the number of Superior Court judges," and charts this relationship.

Population of the County by decades is given, and the graph shows the number of superior court judges for each decade, as follows:

Population	No. of Judges
1900— 170,298	6
1910— 504,131	9
1920— 936,455	20
1930—2,208,492	38
1940—2,785,643	50
1944—3,543,069 (estimated)	50

Four local agencies that have made extensive studies of population trends, says the Bureau's report, estimate the county population in 1970 will be between five and a quarter to six and a quarter million. These trends are taken for the purpose of estimating the needs of the superior court. "It is reasonable to assume from experience," says the Research Bureau's survey, "that court filings will follow population. Therefore, at the end of the next two decades it is probable that the number of Superior Court filings will be approximately 100,000 per year." [Note: Presumably that estimate includes all classes of filings.] The graph showing population trends, projected to 1970, indicates that 74 superior court judges will be required in 1970.

The survey concludes: "The Judges' Committee has stated that at the present time there are a sufficient number of judges to render adequate court service to the number of cases filed. However, any marked increase in filings, as shown by the first six months of 1944, would therefore require additional judges in the not too distant future. Therefore, assuming that the existing number of judges and the number of court filings for the Year 1943 would constitute a normal work load, a mathematical ratio was applied to population and court filings and projected to the Year 1975, to arrive at the approximate number of judges required at any year prior thereto. Over a period of years 1,350 filings per year has, on the average, been the work

load per judge. This also approximates the 1943 average, and does not take into consideration the increased filings for the first six months of 1944. Filings will always fluctuate, and the class of filings (Probate, Psychopathic, etc.) will also fluctuate."

A table of filings per year, by classes, is appended, beginning with the year 1880, down to and including 1943. The most striking change between 1942 and 1943, occurred in civil filings which decreased from 12,452 in 1942, to 8,438 in 1943. At the same time divorce filings increased from 18,807 in 1942, to 24,238 in 1943; Juvenile cases, increased from 6,755 in 1942, to 8,923 in 1943.

Notice of Proposed Amendments to (1) Article XI of the Constitution of the Los Angeles Bar Association, Entitled "Amendments"; and (2) Article X of the By-Laws of the Los Angeles Bar Association Entitled "Amendments to By-Laws."

(1) Article XI of the Constitution of the Los Angeles Bar Association, entitled "Amendments."

To the Members of the Los Angeles Bar Association:

Please be advised that, in accordance with Article XI of the Constitution of the Los Angeles Bar Association, YOU ARE HEREBY NOTIFIED:

—That pursuant to Article XI of the Constitution of the Los Angeles Bar Association, there was presented at the March 22, 1945 monthly meeting proposed amendments to Article XI of the Constitution of the Los Angeles Bar Association, as set forth below, with written notice that said amendments will be presented for adoption at the regular monthly meeting of the members of the Association to be held in the month of April, 1945. The April monthly meeting will be held on Thursday, April 26, 1945, at 12:15 P. M. in the Ballroom of the Biltmore Hotel, 515 South Olive Street, Los Angeles 13, California.

We, the undersigned members of Los Angeles Bar Association, do hereby, in accordance with Article XI of the Constitution

of Los Angeles Bar Association, give notice that at the regular monthly meeting of the members of said Association to be held in the month of April, 1945, we will propose that Article XI of the Constitution of Los Angeles Bar Association be amended to read as follows:

ARTICLE XI.
AMENDMENTS

This Constitution may be amended in the following manner, viz.:

Any ten members in good standing may file with the Secretary a petition in writing signed by them, proposing that any Article or Articles of the Constitution be amended so as to read as set forth in the petition, or so as to amend the Constitution by adding an Article or Articles thereto, which Article or Articles are set forth in the petition.

Upon such a petition being filed, the Secretary shall present it to the Board of Trustees at their next regular meeting, and the Trustees shall either order said amendment to be submitted to the members at a duly noticed meeting of the members to be held within forty-five days from the date the petition is filed with the Secretary or order said amendment to be submitted to the members for approval by written ballot.

If the Board of Trustees shall order the proposed amendment submitted to the members at a meeting thereof, it shall cause a copy of the proposed amendment to be mailed to each member entitled to vote at least five days before the date of the meeting, together with a notice that it will be presented for adoption at said meeting. The certificate of the Secretary or Executive Secretary that such notice has been so mailed shall be conclusive evidence thereof.

If the Board shall order a proposed amendment to be submitted to the members for adoption by written ballot, then it shall cause a copy of the proposed amendment, together with a ballot, which shall contain a short synopsis of the proposed amendment and the following:

Shall the foregoing amendment to the Constitution be adopted?

Yes ☐
No ☐

to be mailed to each member entitled to vote not more than forty-five days after the date upon which the petition proposing the amendment was filed with the Secretary. The ballots must be returned to the Secretary in accordance with the instructions written on or furnished with the ballot, on or before a date to be fixed by the Board of Trustees, which date shall not be less than seven, nor more than fourteen, days after the date upon which the ballots are mailed to the members. The ballots shall be secret.

Immediately upon the close of balloting the vote shall be canvassed and counted by a committee appointed by the President and the result reported in writing to the Board of Trustees at its next meeting.

If a proposed amendment be submitted to the vote of

the members at a meeting thereof, a two-thirds affirmative vote of the members present and voting shall be required for the adoption of the amendment.

If a proposed amendment be submitted to the vote of the members by written ballot, an affirmative vote of a majority of the members voting shall be required for the adoption of the amendment.

/S/ Arnold Praeger
/S/ Wm. C. Mathes
/S/ Charles E. Beardsley
/S/ Helen Kemble
/S/ Don M. Kitzmiller
/S/ Ernestine Stahlhut
/S/ Geo. W. Dryer
/S/ Norman A. Bailie
/S/ Richard A. Turner
/S/ Frederick W. Lake

(2) Article X of the By-Laws of the Los Angeles Bar Association, Entitled "AMENDMENTS TO BY-LAWS"

To the Members of the Los Angeles Bar Association:

Please be advised that, in accordance with Article X of the By-Laws of Los Angeles Bar Association, YOU ARE HEREBY NOTIFIED:

—That there has been presented to the Board of Trustees a proposed amendment to Article X of the By-Laws of the Los Angeles Bar Association. The sponsor of the proposed amendment will move the adoption thereof at the April monthly meeting of the Association which will be held on Thursday, April 26, 1945, at 12:15 P. M. in the Ballroom of the Biltmore Hotel, 515 South Olive Street, Los Angeles 13, California. The proposed amendment as submitted to the Board of Trustees, pursuant to Article X of the By-Laws, is as follows:

To the Board of Trustees of
Los Angeles Bar Association
1124 Rowan Building
458 South Spring Street
Los Angeles 13, California

Gentlemen:

The following amendment to Article X of the By-Laws of the Los Angeles Bar Association is hereby proposed in accordance with provisions of Article X of said By-Laws, with

the request that the Board of Trustees notify the membership that the sponsor of said proposed amendment will move the adoption thereof at the monthly meeting of the Association to be held in April, 1945.

It is proposed to amend Article X of the By-Laws entitled "Amendments to By-Laws" to read as follows:

These By-Laws may be amended at any annual, monthly, or special meeting of the Association by a two-thirds vote of all members of the Association entitled to vote present at the meeting and voting, provided the proposed amendment has been submitted to the Board of Trustees at least fifteen days before the date of the said meeting, and provided the proposed amendment, with notice that it will be presented for adoption at the meeting, shall have been mailed to all active members of the Association at least five days before the date of said meeting. It shall be the duty of the Secretary to give notice of any proposed amendment to these By-Laws which may be presented to him signed by ten members of the Association, and his certificate that such notice has been so mailed shall be conclusive evidence thereof.

Upon the consideration of any proposed amendments at any meeting, amendments thereto on the same subject may

be offered, voted upon and adopted at the same meeting without previous notice.

The Board of Trustees may order any proposed amendment to be submitted to the members of the Association for adoption by written ballot in lieu of presenting the amendment for adoption at a meeting of members of the Association. In such event, a copy of the proposed amendment shall be mailed to each member of the Association entitled to vote within forty-five days after the date upon which the proposed amendment was filed with the Secretary. The procedure to be followed by the members in casting their votes shall be such as to insure secrecy of ballot; otherwise, the form of ballot to be used and procedure to be followed in casting the ballot shall be determined by the Board of Trustees.

If a proposed amendment be submitted to the vote of the members by written ballot, an affirmative vote of a majority of the members voting shall be required for the adoption of the amendment.

/S/ ARNOLD PRAEGER.

Respectfully submitted,

PAUL FUSSELL, *Secretary.*

DUMBARTON OAKS—AND AFTER*

By J. E. Wallace Sterling†

Mr. Chairman:

It is a privilege to speak to this Association on this subject. I believe that the American Bar Association has maintained, since it was founded 67 years ago, a committee or a section on international law. Its interest in the subject has been well sustained and it has been steadily forward looking. It has consistently urged better preparation for the settlement of international disputes by pacific and judicial processes. This was the case in its support of the Hague Tribunals at the turn of the century; this was the case in its support of the Permanent Court of International Justice; and its current interest in the oppor-

*An address delivered at a meeting of Los Angeles Bar Association on March 22, 1945.

†Professor of History, California Institute of Technology, and News Analyst for Columbia Broadcasting System.

tunities and challenge of today's situation is manifest by discussions such as this one.

When your president invited me to set this discussion rolling, I suggested that I attempt to place Dumbarton Oaks in its historical setting. He agreed,—his agreement may have come in that bleak, even desperate, moment of lining up a speaker, but he agreed,—so he shares with me the responsibility for part of what follows.

At risk of oversimplification let me state what I believe to be the kernel of the Dumbarton Oaks proposals. Their main purpose is clearly stated: "to maintain peace and security." How is this to be achieved? There is a hierarchy of procedures.

An underlying one is to seek the removal or emasculation of causes of war. This to be done mainly, as I read the proposals, by action stemming from the findings and recommendations of the proposed Economic and Social Council. It is to be noted in passing, that this council is elected by and responsible to the General Assembly of the Organization in which each member state is represented.

Procedure along these lines is imperative, but it will be slow. It will not at once or soon ensure against disputes. So when disputes arise, what happens? Efforts are to be made to settle them peaceably. Justiciable disputes are to be referred to a revived Permanent Court. Political disputes may be settled by diplomatic negotiation, by mediation, by arbitration in which both Council and Assembly may have a role to play.

If this available machinery for the pacific settlement of disputes fails to resolve the question at issue, then the matter is to be laid squarely before the Security Council, dominated by the Great Powers. This Council must then decide if international peace is endangered by the dispute, and if so what action is to be taken. Such action may be diplomatic, economic, or military, and would amount to the application of sanctions.

And on this point one word. According to the stated principles of the Organization all members would bind themselves to forego use of force, and the threat to use force, as means of settling international disputes; they would all pledge themselves to make use of the available machinery for the pacific settlement of disputes. These are the principles, the law if you please, of

the proposed Organization. The sanctions are written into the Proposals just in case any nation in our advanced stage of civilization should be so remiss as to denounce the principles and violate the law. Since it is assumed that the application of sanctions can be effective only if backed by the Great Powers, these Powers are accorded a position of dominance in the Security Council on the principle that responsibility must accompany power. That this is writ large in the Proposals is manifest in the fact that Chapter VIII, which deals with the arrangement for settling disputes and preventing aggression, comprises about one-third of the entire Dumbarton Oaks text.

So much for what I believe to be the kernel of the proposals. Now may I venture some analysis of the historical background from which these proposals have sprung, and I invite you to keep in mind this question: "Why is there now so much emphasis on the use of applied force as an instrument to preserve peace?"

Since the American Bar Association was established in 1878, the world has seen the most amazing technological advances in its history; the countries of the earth have become increasingly industrialized and its surface has been criss-crossed with fast and commodious transportation lines. A Jules Verne millenium has almost come to pass. In that same period mankind has sought to overcome two great scourges of the human race: disease and pestilence on the one hand; war on the other. The march of progress in the control of disease has gone far; efforts to eliminate war have dismally failed.

One could go far back in history to produce a passing answer

as to why war still stalks the land. But let us confine ourselves to the period represented by the lifetime of the Association. Europe was then, as it is now, the storm center of the world. And its great powers, except Britain, had adopted the system of universal military service. Europe had become an armed camp. The expense and the danger potential of the situation was evident. Attempts were made at The Hague Conferences to arrange for a limitation of armaments. They failed. The armed camp only flexed new muscles.

I have said Europe was an armed camp. It was really two. For after the turn of the century the Great Powers of Europe arrayed themselves in two alliance systems. One group of powers,—Germany, Austria-Hungary, Italy—was balanced off against another, France, Russia and Britain. There was a balance of power, but a precarious one.

What fundamental function did this balance perform? The Great Powers involved often cooperated in concerted action to adjust differences among smaller powers. By so doing they sought to keep the precarious balance from being upset by an obstreperous small nation or group of small nations. Through their varying successes they were able to localize small wars and postpone a great one. But when one of the Great Powers became involved in a dispute to a point where it believed its existence was at stake, as did Austria-Hungary in 1914, the balance was upset and war ensued.

The balance of power system failed to prevent war. Yet it performed a service, and not at all a mean service. It aligned a group of powers whose war efforts denied victory to the aggressor; it operated to cheat him of the goals for which he resorted to war.

As World War I went its monotonous and costly way, men began to discuss method and means of preventing a recurrence of the holocaust. The organization born of these discussions was the League of Nations, one of the great innovations which flowed from World War I. There were other innovations too, and of these I should like to say something in a moment, but first a word about the League and its shortcomings, even though this may be a familiar melancholy tale.

The end of World War I took the victors by surprise. They

were planning in late summer 1918 to deliver the knockout blow in 1919. In this situation there was no prepared agreement as to armistice terms, or any agreement in detail as to the form the League of Nations might take. These details had to be hammered out amid the myraid pressures of making a peace. There was no opportunity for broad public discussion of the Covenant of the League before it was adopted. In this particular at least, the Dumbarton Oaks Proposals enjoy an advantage over the League Covenant.

Furthermore the League had three shortcomings I should like to mention. 1. The Covenant was tied to the treaties of peace, this largely at President Wilson's insistence. Before belligerent nations could make peace, they obliged themselves to accept the Covenant. There was thus a pressure involved in the Covenant's acceptance which was, I submit, deleterious. There was a finality about the process which obstructed opportunity for constructive public criticism and made more onerous the task of amendment.

2. The Covenant reflected to a fateful degree the Presi-

dent's worthy and high idealism, in that it elevated to artificial heights the power of moral suasion, exercised by public opinion, as a force for peace, and this dispite the fact that the public had had no adequate opportunity to discuss the Covenant itself. One more illustrative word on this. The French placed little faith in the effectiveness of the League as an instrument to *prevent* aggression. It is said that grand old skeptic, Clemenceau, greeted the announcement of President Wilson's fourteen points with the remark: "What manner of man is this? Le bon Dieu had only ten." The applied skepticism of the French wrung from Wilson, and secondarily from Lloyd George, an admission that the League would be ineffective in preventing aggression by a Great Power. This admission was formalized in the draft treaty of June 28, 1919, wherein the United States and Britain, through Wilson and Lloyd George, were pledged to defend France against German aggression. This treaty was never ratified, but it emphasizes that from the outset President Wilson and Lloyd George underwrote French doubts as to the effectiveness of the League.

3. The League did not embrace all the great powers, thus making it impracticable for the great powers in the League to consider favorably the enforcement of the Covenant's comprehensive guarantees, such as were stated and implied in Article 10.

It seems to me that effort is made in the Dumbarton Oaks Proposals to avoid these shortcomings of Covenant and League, notably in the former's great attention to the importance of including all the Great Powers who are peace-loving, and in seeking to arrange for applied force as a potentially effective instrument to prevent aggression.

I said a moment ago that there were other innovations growing out of World War I. These might be labelled the Balkanization of Europe, and this was associated with the extended democratization of Europe in accord with the self-determination-of-nations principle. This circumstance was heady wine to new nations, and to those inexperienced in the practice of democratic government. The result was a growth in political and economic separatism and particularism, which atomized the economic life of Europe to a disturbing and vitiating degree. It evoked an assertiveness on the part of the small nations which was not matched by their faith in collective security, a system which was

perhaps more essential to them than to their greater neighbors. Under pressure of external threats and internal national pride, they circumscribed their own economic best interests and allowed their several security alliances systems first to atrophy and then dissolve under the impact of the great depression and the Axis menace.

With the demonstrated failure of the League in the 1930's as an instrument to prevent aggression, Europe reverted to its old Balance of Power system. This same system was really extended overseas as Japan adhered to the Axis, and as the United States and the British Dominions found their interests more and more intimately bound up with those of Britain and her allies. Once more the Balance of Power failed to prevent war; but once more it is operating to deny victory to the aggressor. This achievement should by no means be minimized, nor should its cost.

So thinking men among the United Nations have directed their attention afresh not in the first instance to how the aggressor can be cheated of his goal, but above all to how aggression itself can be prevented. This is to me the kernel of the Dumbarton Oaks Proposals, which seek to achieve the desired end by associating responsibility with power and by arranging that *all* the Great Powers will be engaged and committed in principle.

These proposals have, at this stage of the game, the great merit of being tentative. This fact affords opportunity for public examination and discussion, but, in turn, it points up sharply an item of transcending importance. The electorate, public opinion if you will, is in the last analysis the force which will make or unmake any international system of security. With its support even a clumsy system stands a chance of success; without its support even a carefully streamlined and rational system will flirt with failure.

These items I offer as some of the highpoints in the history of our recent and immediate past out of which the Dumbarton Oaks Proposals have grown. Now in conclusion, may I turn once more to the Proposals themselves. In doing so I should like to emphasize four of the many points about them which will unquestionably come in for discussion.

First, there is the suggested voting procedure in the Security Council. The smaller or middle powers are already objecting to the dominance of the Great Powers in the Security Council

as a dictatorship of the Big Four or Five. Decision for the Security Council to undertake investigation of a dispute requires a vote of seven of the eleven members of the Council, including all the Great Powers except any of them which may be party to the dispute in question. For the application of sanctions against a power which is threatening world peace, a decision must include the unanimous vote of all the Great Powers (presumably five) plus the vote of two of the other powers represented on the Council. This arrangement would give any Great Power a veto of action against itself. I doubt if anything much better could be contrived at the present, unless it were to give more recognition to the power inherent in the so-called middle powers, of which Canada is the conspicuous example.

In the second place, the smaller and middle powers might be given more power in the whole Organization if more importance were attached to the Economic and Social Council which is really under their charge through the General Assembly. As the Proposals now stand, this Economic and Social Council is to be comprised of the representatives of eighteen states to be elected by the Assembly. I should like to see this Council added to by the inclusion of expert representatives from the various special organizations, such as UNRRA or the International Civil Aviation Organization. Such addition wiuld bring to the Ecoc-nomi and Social Council not only representatives of states politically responsible to their respective governments but also specialists in various fields of endeavour to promote international cooperation. Since, one of the purposes of the Organization is to remove causes of war, I should like to see the Proposals expanded in such a way as to make the following obligations binding on the Security Council: (a) that it make use of the expanded Economic and Social Council when investigating a dispute; (b) that it entertain recommendations from that Council when determining the settlement of a dispute; and (c) that, if it rejects the recommendation of the Economic and Social Council, it publish a statement explaining why it did so. I submit that the addition of such powers to the Economic Council, responsible as it would be to the General Assembly, would help to placate the sensitive, even injured feelings and allay the suspicions of the smaller powers. It would also place more emphasis on removing the causes of war than now appears in the Proposals.

Third, there is the matter of regionalism. Regional arrangements are not precluded by the Dumbarton Oaks Proposals. Indeed, settlement of disputes through regional arrangements is encouraged. This seems to me eminently sound, so long as the regional pacts are consistent with the principles of the Proposals and so long as their operations are cleared through the central Organization. But I dare say this point will be under extended discussion at San Francisco.

The last item concerns constitutional action by each member state to implement the Proposals. This may raise that dread word sovereignty. Sovereignty "is one of those words which Humpty Dumpty might have explained to Alice as meaning 'just what I choose it to mean'."¶ But participation in such an organization as proposed at Dumbarton Oaks would be, as I see it, the exercise not the abridgment of sovereignty. And I submit that, to make action against aggression effective, command of adequate military force for use against the aggressor must be conceded in advance of the event.

The current effort in this country to excite public interest in and add to public information on this vast and complicated security problem derives from a realization that unless the Great Powers can agree to assume the load which the Proposals assign to them, and unless they can discharge their great responsibilities in a sense of world citizenship, there is danger of reversion to an international anarchy wherein each nation will be for itself, and the devil take the hindmost. Of this the predictable outcome is another World War. Such is the horrible alternative to successful application of the inner thesis of the Proposals. The tentative nature of these proposals may be their great strength, provided only that the purposes they are avowedly designed to serve are not lost sight of by the people of the United Nations or by the governments that serve them. Given this, we may get close enough to our goal for all practical purposes.

¶Manley O. Hudson, "The International Law of the Future," an address before the American Bar Association, September 11, 1944, printed in *International Conciliation*, No. 406, December, 1944, pp. 757-773.

NEW MEMBERS

It is with pleasure that the BULLETIN presents the names of 166 persons who have become new members of the Association, or whose memberships have been reinstated, in the period from November 30, 1944, to March 13, 1945.

E. Neal Ames
Gertrude H. Austin
Herman Bachrack
Josephine Baker
Louis Ballenger
Edmund F. Barker
Jerome DeWitt Barnum
David L. Bastedo
Adam Y. Bennion
Laurence Berger
R. S. Berry
Henry E. Bianchi
Richard F. Bird
Robert G. Blanchard
Ardene D. Boller
Kathryn C. Bonner
Leland S. Bower
Walter L. Bowers
Paul G. Breckenridge
Virginia Pyne Briggs
Louis Daniel Brown
James Joseph Broz
James M. Carter
Elmer Davis Caudill
Murray M. Chotiner
Harry C. Cogen
William E. Cornell
A. P. Coviello
William Kay Crawford
Phil H. Curry
William N. Deatherage
C. Clair Dillavou
Ralph F. Dixon
John F. Dolan
Joseph Duchowny
Hammish B. Eddie
Henry B. Ely
Owen C. Emery
Joseph T. Enright
Morton E. Feiler
Harold A. Fendler
William Ford
M. D. Fraider
Leo A. Freeman
Wayne M. Freiburghouse
John C. Gillham
C. Arden Gingery
Alexander K. Ginsburg
A. S. Gold
Harry A. Goldman
Benjamin J. Goodman
Donald P. Goodwin
Charles Perry Gould
G. M. Grant
John Gratton
Vernon S. Gray
Charles Greenberg
Chris J. Griffin
J. Vincent Hannon
Russell Harriman
John R. Hellen
Howard B. Henshey
Eugene D. Hillman
Leonard Hirsch
O. G. Hoegstedt
Stanley Howell
Edgar F. Hughes
John S. Hunt
Harold J. Hunter
Henry C. Huntington
Inez Ingram
Garfield R. Jones
R. Alston Jones
Ben M. Kochman
Benjamin Kosdon
Steiner A. Larsen
William R. Law
Gordon Lawson
E. O. Leake
C. R. Liljestrom
Lewis E. Lyon
William E. MacFaden
Melvin E. MacKinnon
A. G. MacRobbie
James E. Mahon
Vincent Anthony Marco
Collins Mason
Hallam Mathews
John H. Mathews
Lee D. Mathews
Harold W. Mattingly
Frank J. McCarthy
James J. McCarthy
R. S. McLaughlin
William T. McNeely
John C. Miles
Everett L. Miller
Charles Mitschrich
William A. Monten
Robert A. Morton
Frank A. Mouritsen
Floyd B. Mullendore
Bruce Murchison
Forrest Murray

Flora B. Nelson
Harold Nuzum
James M. O'Brien
Victor J. Obegi
John C. Packard
Benjamin S. Parks
Raymond E. Parr
Albert Pearlson
Everett R. Peckham
Proctor K. Perkins
L. Dean Petty
Bernard Potter, Sr.
James L. Potts
Irving E. Read
Donald M. Redwine
Thomas B. Reed
Charles F. Reiche
Orlando H. Rhodes
Royal S. Riddle
L. S. B. Ritchie
John Moore Robinson
Jerome D. Rosenfield
John A. Rowe, Jr.
Charles Dell Rubin
Elizabeth J. Saeta
Wallace Bryan Scales
Arthur E. Schifferman
Frank R. Seaver
Gail B. Selig
Chaim Shapiro
George G. Shapitric
Jacob Shearer
Paul Sheedy
Edward Wesley Sheridan
Harry Sherr
Harry R. Simon
Sylvia M. Sirkin
Harold R. Spence
Frank C. Sproul
Robert J. Stahl
Raymond G. Stanbury
A. E. Stebbings
Arnold Odlum Steele
Robert H. Stelzner
Jess E. Stephens
Noel C. Stevenson
Robert Armstrong Stewart, Jr.
William A. Sumner
Sydney Tannen
Alfred G. Taylor
Woodward M. Taylor
W. I. Titus
Glendon L. Tremaine
Burton A. Van Tassel
Louis C. Viereck
Bion B. Vogel
Eugene D. Williams
Reginald S. Wilson
Joseph Henry Wolf
Thomas A. Wood
Samuel P. Young
Edward K. Zuckerman

CRIMINAL APPEALS*

By Thomas P. White,
Associate Justice of the District Court of Appeal

AT the outset, I shall comment upon the changes in the Rules on Appeal applicable to criminal cases, and upon the operation of the new rules as compared with the ones they superseded.

Oral notices of appeal in criminal cases were abolished by the new rules and the time to file written notice of appeal was extended to 10 days after rendition of judgment or order, except that the time to appeal from an order denying motion for new trial shall not start until after the order granting probation has been made, or judgment rendered, whichever occurs sooner. (Rule 31.)

The new rules also provide for the voluntary dismissal of an appeal by filing an abandonment of appeal in the superior court, if the record has not yet been filed in the reviewing court. (Rule 38.)

Both of these rules had as their purpose the elimination of cost of preparing records, as, after conviction, the attorney formerly had to ask for a record at once to protect his client. These rules seem to have achieved their end for very few appeals are now dismissed after the record is filed in the reviewing court, and thse few are usually appeals taken by defendants in *pro per*.

The appellant no longer is required to file a written application for transcript stating the points on appeal and designating the portions of the transcript required. Under the new rules the notice of appeal serves as an order to the clerk and reporter to prepare "normal records." Motions, and affidavits in support of or in opposition to such motions, instructions given or refused, proceedings on *voir dire*, opening statements, and arguments to the jury are not contained in normal records so that if any of these are necessary to the proper presentation of the appeal the appellant should file application for these additions

*This article originated as an address by Justice White before the Criminal Law Section of the Association. It is too long to be published in its entirety in one number of the BULLETIN. We believe that most readers (whether or not they practice in the field of criminal law) will find this article interesting, instructive, and thought-provoking. Rather than cut any portion of it, we shall print it in two installments.—Ed.

at the same time he files his notice of appeal, stating the points on which he intends to rely which make it proper to include the additional material. (Rule 33b.)

The time for filing briefs in criminal appeals was also extended from the previous 10-10-5 days to 30-30-20 days, making it the same as in civil appeals. (Rule 37.) This change was made because it was apparent that the old rule was too drastic and had never been complied with. Here are some comparative figures on time taken for filing of briefs which may be of interest:

For a six months' period prior to the time the new rules became effective, the average time taken for the filing of briefs follows:

Appellant's opening brief (Rule time 10 days) ..... Average 25 days taken
Respondent's brief (Rule time 10 days) " 23 days taken
Appellant's reply brief (Rule time 5 days) " 18 days taken

—or during this period in which 25 days were allowed by rule, an average of 66 days actually was required. It is obvious from these figures that under the old rules the briefs were seldom filed in time.

Now taking a similar number of appeals over a similar period after the new rules were in operation. The period taken is the same first 6 months of 1944, a period starting six months after the new rules became effective, so that all attorneys were then aware of the change in time.

Appellant's opening brief (Rule time 30 days) ..... Average 47 days taken
Respondent's brief (Rule time 30 days) " 30 days taken
Appellant's reply brief (Rule time 20 days) " 29 days taken

Under the new rules the average appeal now takes 106 days before all briefs are on file, or 40 days more than under the old rules. It should be noted, however, that the above figures for appellant's reply briefs are not so accurate, because in many cases no reply brief is filed at all, so a fewer number of cases form the basis for the average.

It is, however, interesting to note that under the old rules, when appellant only had 10 days to file his brief under the rules, on the average he required 15 additional days, while under

the new rules giving him 30 days, he still needs an additional 17 days.

It should be noted, too, that the time for filing a petition for rehearing in the District Court of Appeal after decision by that court in a criminal appeal, was reduced 2 days by the new rules. Formerly the losing party had 10 days to file such petition, leaving only 5 days for the filing of an answer to it and for the court to rule. Two days were taken off the attorney's time, reducing it to 8 days and these 2 days were added to the time for answer and determination by the court. This time is undoubtedly too short but the total time for rehearing is limited by the Constitution.

Next I wish to mention the work of this district with criminal appeals. For the last several years the number of criminal appeals filed in this district have averaged approximately 8 per month. The highest period was in 1934 when an average of 12 a month was reached; but since then the average of between 90 and 100 appeals per year has been maintained with regularity.

Of this number of appeals, reversals were obtained in approximately 15%. The figure naturally varies from year to year but a ten-year average indicates that about one defendant in six who files and carries his appeal through to decision, may expect a reversal or modification of the trial court's ruling.

The number of hearings granted by the supreme court after decision by this court also varies each year, but never has exceeded 10% and averages over a period of years approximately 7%. This is much less than the average number of hearing granted in civil cases.

The hearings granted in criminal cases are fairly evenly divided between reversals and affirmances by the district court with no exception over a period of years.

So much for the rules and statistics. Now if I would say a word in regard to criminal appeals, or in fact with reference to all appeals, it would be that you not be timid or afraid to argue your case in your briefs. In that connection, I am reminded of the story of the lawyer who started his argument by saying "Law is a rule of civil conduct imposed by the superior upon the inferior. Law in its narrower sense . . ." About this time one of the justices of the appellate tribunal interrupted

him by saying "What you are telling us is taught to law students in their freshman year. Certainly, you should give this court credit for knowing some of the elementary and fundamental rules of law," to which the attorney replied, "That is the mistake I made in the lower court."

It has been my experience that a lawyer who waives oral argument is the one who is satisfied that he has argued and presented his case fully in his brief. After all, at the conferences of the justices upon a case and before the justice who is assigned to write the opinion, are the briefs. Whatever may have been said at the oral argument may, because of human frailties, be forgotten, but the printed word in the brief is ever before the appellate tribunal throughout the consideration of the appeal. When citing a case, do not content yourself with a mere statement of the title thereof, but point out wherein the factual situation is comparable with the case under consideration, the similarity of rulings made and claimed errors of the trial judge, and then the law enunciated by the court in the cited case and its applicability to the instant proceedings.

A familiar ground of appeal in criminal cases is the oft repeated claim that the evidence is insufficient to support the verdict. Some lawyers are of the opinion that such a contention is never effectual in the appellate court. But such is not the case. It should be remembered that while jurors are the sole and exclusive judges of the value and effect of evidence, their discretion and power in that regard is not absolute. Just verdicts cannot be founded upon unreasonable inferences, speculation or suspicion, but must be grounded upon satisfactory evidence and reasonable inferences predicated thereon. In other words, the sufficiency of the jury's verdict must be tested in the light of whether the evidence upon which it is framed was of such a character that it can be said therefrom that no reasonable doubt of defendant's guilt existed. By that I do not mean to say that the appellate court can pass upon the credibility of witnesses or reverse a case simply because of a conflict in the evidence. Often times, the situation presented is one wherein alleged variances or inconsistencies apparent in the testimony and contradictions therein undoubtedly afford opportunity for a persuasive argument to the jury against the reliability of such testimony, and a reviewing court cannot disturb a finding thereon in

the trial court unless it can be said that the testimony is *per se* unbelievable.

It rarely happens that a case is presented on appeal in which some inconsistencies in the testimony of certain witnesses may not be discovered. These inconsistencies may be due to various causes. It is perhaps quite true that in some instances they are occasioned by deliberate untruthfulness of witnesses, but quite often to the forgetfulness of witnesses, their excitement, and other causes. I think you will agree with me that a case seldom arises upon the circumstances of which the witnesses precisely agree in all respects, and yet it by no means necessarily follows that in such cases some one or more of the witnesses have wilfully given false testimony. Some one or more may be mistaken, or, as often happens, some might have observed circumstances that others did not. But whatever may be the cause of such differences, it is true they occur in nearly every case of disputed questions of fact. Therefore, if every case taken to the appellate courts were to be reversed because of discrepancies or contradictions in the testimony of witnesses, without whose testimony a verdict of the jury or the findings of the court could not be sustained, there would, indeed, be few cases in which a reversal would not be compelled upon the ground of the insufficiency of the evidence to support the verdict or findings.

(*The second and final installment of this article will appear in the May number of the BULLETIN.*)

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